

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Eddie Thomas,
Plaintiff

v.

Aaron Harroun, et al.,
Defendants

Case No.: 2:24-cv-00345-APG-MDC

Order Dismissing Complaint with Leave to Amend

Plaintiff Eddie Thomas, who is incarcerated in the custody of the Nevada Department of Corrections (NDOC) at Southern Desert Correctional Center, has submitted a civil rights complaint under 42 U.S.C. § 1983 and an application to proceed *in forma pauperis*. ECF Nos. 1, 1-1. I will temporarily defer the matter of the filing fee. I now screen the complaint under 28 U.S.C. § 1915A.

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

1 In addition to the screening requirements under § 1915A, the Prison Litigation Reform
2 Act (PLRA) requires a federal court to dismiss a prisoner's claim, if "the allegation of poverty is
3 untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief may be
4 granted, or seeks monetary relief against a defendant who is immune from such relief." 28
5 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can
6 be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the
7 same standard under § 1915 when reviewing the adequacy of a complaint or an amended
8 complaint. When a court dismisses a complaint under § 1915(e), the plaintiff should be given
9 leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from
10 the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v.*
11 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

12 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*
13 *Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim
14 is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim
15 that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir.
16 1999). In making this determination, the court takes as true all allegations of material fact stated
17 in the complaint, and the court construes them in the light most favorable to the plaintiff. *See*
18 *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se* complainant
19 are held to less stringent standards than formal pleadings drafted by lawyers. *See Hughes v.*
20 *Rowe*, 449 U.S. 5, 9 (1980). While the standard under Rule 12(b)(6) does not require detailed
21 factual allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic*
22 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause
23 of action is insufficient. *Id.*

1 A reviewing court should “begin by identifying pleadings [allegations] that, because they
 2 are no more than mere conclusions, are not entitled to the assumption of truth.” *Ashcroft v. Iqbal*,
 3 556 U.S. 662, 679 (2009). “While legal conclusions can provide the framework of a complaint,
 4 they must be supported with factual allegations.” *Id.* “When there are well-pleaded factual
 5 allegations, a court should assume their veracity and then determine whether they plausibly give
 6 rise to an entitlement to relief.” *Id.* “Determining whether a complaint states a plausible claim
 7 for relief . . . [is] a context-specific task that requires the reviewing court to draw on its judicial
 8 experience and common sense.” *Id.*

9 All or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte* if the
 10 prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on
 11 legal conclusions that are untenable (*e.g.*, claims against defendants who are immune from suit
 12 or claims of infringement of a legal interest which clearly does not exist), as well as claims based
 13 on fanciful factual allegations (*e.g.*, fantastic or delusional scenarios). *See Neitzke v. Williams*,
 14 490 U.S. 319, 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

15 II. SCREENING OF COMPLAINT

16 Thomas sues six Lovelock Correctional Center (LCC) staff: shift commander Lt. Aaron
 17 Harroun, classification committee member Donald Southworth, shift commander Sgt. Craig
 18 Molnair, nurse Jane Doe, and correctional officer John Doe.¹ ECF No. 1-1 at 2-3. He brings
 19 three claims and seeks declaratory relief and monetary damages.

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21
 22 ¹The use of “Doe” to identify a defendant is not favored. *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir.
 23 1980). But flexibility is allowed in some cases where the identity of the parties will not be known prior to
 filing a complaint but can subsequently be determined through discovery. *Id.* If the true identity of any of
 the Doe Defendants comes to light during discovery, Thomas may move to substitute their true names to
 assert claims against them at that time.

1 Thomas alleges the following. On the morning of May 18, 2023, he had terrible back
2 pain. Instead of calling for man-down, the LCC unit officer told him to go the infirmary.
3 Another inmate helped him to the infirmary. The unit officer hadn't informed the medical staff
4 that he sent Thomas. Again instead of calling man down, the nurse sent Thomas back to his unit.
5 He tried but was not able to make it back to his unit. He spoke with Sgt. Martin in the operation
6 headquarters, who told him he had to go back to his unit and file an emergency grievance.
7 Thomas again explained that he could not make it back on his own. Sgt. Martin disappeared, and
8 Lt. Harroun appeared. Thomas told him the situation; Harroun said he could not help him and
9 ordered him back to the unit. Thomas again tried to explain that he could not make it back.
10 Harroun ordered Thomas to place his hands behind his back. Thomas said he was not resisting,
11 but he was physically unable to comply. Officers rushed him, tackling him and taking him to the
12 floor. They placed knees on his back, handcuffed him, placed him in a restraint chair and took
13 him to the infirmary. During the incident, Thomas repeatedly asked them to preserve
14 surveillance footage that showed the fellow inmate helping him get to the infirmary. Sgt.
15 Molnair was the shift commanding officer that day. Thomas returned to his unit later in the
16 morning. Molnair knew Thomas suffered from chronic back pain, but didn't allow him to
17 receive a mattress until the shift ended about 8:00 p.m. At his disciplinary proceedings,
18 Southworth didn't allow Thomas to present video footage evidence, telling him that there was no
19 footage. Thomas was placed in segregation from May 18, 2023 until July 6, 2023.

20 Based on these allegations, Thomas asserts claims for excessive use of force.

21 **A. Eighth Amendment and Excessive Use of Force**

22 The Eighth Amendment prohibits the imposition of cruel and unusual punishment and
23 "embodies 'broad and idealistic concepts of dignity, civilized standards, humanity, and

1 decency.” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). When a prison official stands accused of
2 using excessive physical force in violation of the cruel and unusual punishment clause, the
3 question turns on whether force was applied in a good-faith effort to maintain or restore
4 discipline, or maliciously and sadistically for the purpose of causing harm. *Hudson v. McMillian*,
5 503 U.S. 1, 6-7 (1992) (citing *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986)). In determining
6 whether the use of force was wanton and unnecessary, it may also be proper to consider factors
7 such as the need for application of force, the relationship between that need and the amount of
8 force used, the threat reasonably perceived by the responsible officials, and any efforts made to
9 temper the severity of a forceful response. *Hudson*, 503 U.S. at 7. Although an inmate need not
10 have suffered serious injury to bring an excessive force claim against a prison official, the Eighth
11 Amendment’s prohibition on cruel and unusual punishments necessarily excludes from
12 constitutional recognition *de minimis* uses of physical force. *Id.* at 9-10.

13 Thomas’ allegations implicate his right to be free from the use of excessive force. But he
14 fails to state a colorable Eighth Amendment claim because, while he describes actions of some
15 defendants, he does not identify which officers allegedly tackled and restrained him when they
16 knew he was suffering serious back pain and not resisting. So I dismiss his excessive force claim
17 without prejudice and with leave to amend.

18 **B. Fourteenth Amendment Due Process in Disciplinary Hearings**

19 To state a cause of action for deprivation of procedural due process, a plaintiff must first
20 establish the existence of a liberty interest for which the protection is sought. *Sandin v. Conner*,
21 515 U.S. 472, 487 (1995). A prisoner has a liberty interest when confinement “imposes [an]
22 atypical and significant hardship on the inmate in relation to the ordinary incidents of prison
23 life.” *Id.* at 484. In *Sandin*, the Supreme Court focused on three factors in determining that the

1 plaintiff possessed no liberty interest in avoiding disciplinary segregation: (1) disciplinary
2 segregation was essentially the same as discretionary forms of segregation; (2) a comparison
3 between the plaintiff's confinement and conditions in the general population showed that the
4 plaintiff suffered no "major disruption in his environment;" and (3) the length of the plaintiff's
5 sentence was not affected. *Id.* at 486-87.

6 When a protected liberty interest exists and a prisoner faces disciplinary charges, prison
7 officials must provide the prisoner with (1) a written statement at least 24 hours before the
8 disciplinary hearing that includes the charges, a description of the evidence against the prisoner,
9 and an explanation for the disciplinary action taken; (2) an opportunity to present documentary
10 evidence and call witnesses, unless calling witnesses would interfere with institutional security;
11 and (3) legal assistance where the charges are complex or the inmate is illiterate. *See Wolff v.*
12 *McDonnell*, 418 U.S. 539, 563-70 (1974).

13 "When prison officials limit an inmate's efforts to defend himself, they must have a
14 legitimate penological reason." *Koenig v. Vannelli*, 971 F.2d 422, 423 (9th Cir. 1992). An
15 inmate's right to present witnesses may legitimately be limited by "the penological need to
16 provide swift discipline in individual cases . . . [or] by the very real dangers in prison life which
17 may result from violence or intimidation directed at either other inmates or staff." *Ponte v. Real*,
18 471 U.S. 491, 495 (1985). Prison officials "must make the decision whether to allow witnesses
19 on a case-by-case basis, examining the potential hazards that may result from calling a particular
20 person." *Serrano v. Francis*, 345 F.3d 1071, 1079 (9th Cir. 2003). But an inmate has no right to
21 cross-examine or confront witnesses in disciplinary hearings. *See Wolff*, 418 U.S. at 567-68.

22 "[T]he requirements of due process are satisfied if some evidence supports the decision
23 by the prison disciplinary board" *Superintendent, Massachusetts Corr. Inst., Walpole v.*

1 *Hill*, 472 U.S. 445, 455 (1985). But this standard does not apply when a prisoner alleges that a
 2 prison guard's report is false and retaliatory. *Hines v. Gomez*, 108 F.3d 265, 268 (9th Cir. 1997).

3 Inmates have "a constitutional right under the Due Process Clause of the Fourteenth
 4 Amendment to be permitted to examine documentary evidence for use in the prison disciplinary
 5 hearing." *Melnik v. Dzurenda*, 14 F.4th 981, 984 (9th Cir. 2021).

6 If a prisoner must be allowed to present evidence in his defense, it necessarily
 7 follows that he must have some right to prepare for that presentation. With no
 8 access to the evidence that will be presented against him, a prisoner could neither
 build a defense nor develop arguments and evidence to contest the allegations at
 the disciplinary hearing.

9 *Id.* at 985. "[A] prisoner's right to present a defense must extend to the preparation of a defense,
 10 including compiling evidence." *Id.* at 986.

11 Thomas alleges that grievance coordinator and disciplinary commissioner Southworth
 12 "refused to honor video footage" that would have shown that Thomas did not resist. Thomas
 13 asked to view the video and Southworth told him that it did not exist. It is unclear whether
 14 Thomas is trying to assert a claim that Southworth violated Thomas' due process rights during
 15 the disciplinary proceedings, perhaps by not permitting Thomas to view the evidence. So I also
 16 give Thomas leave to amend to assert a claim that Southworth violated his due process rights.

17 **C. First Amendment: Retaliation**

18 Prisoners have a First Amendment right to file prison grievances and to pursue civil
 19 rights litigation in the courts. *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir. 2005). "Without
 20 those bedrock constitutional guarantees, inmates would be left with no viable mechanism to
 21 remedy prison injustices. And because purely retaliatory actions taken against a prisoner for
 22 having exercised those rights necessarily undermine those protections, such actions violate the
 23 Constitution quite apart from any underlying misconduct they are designed to shield." *Id.*

1 To state a viable First Amendment retaliation claim in the prison context, a plaintiff must
2 allege: “(1) [a]n assertion that a state actor took some adverse action against an inmate
3 (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s
4 exercise of his First Amendment rights, and (5) the action did not reasonably advance a
5 legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005). Total
6 chilling is not required; it is enough if an official’s acts would chill or silence a person of
7 ordinary firmness from future First Amendment activities. *Id.* at 568-69. A plaintiff who fails to
8 allege a chilling effect may still state a claim if he alleges that he suffered some other harm that
9 is more than minimal. *Watson v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2012). More than
10 minimum harms include the filing of a false disciplinary charge against a prisoner, placing him
11 in administrative segregation, or interfering with his parole hearing. *Id.* at 1115.

12 At the end of his complaint, Thomas alleges, without elaboration, that the “incident” was
13 in retaliation for his filing of an earlier civil rights complaint. But he does not describe which
14 defendants took what specific actions in order to retaliate against him. I give Thomas leave to
15 assert a retaliation claim.

16 **D. Leave to Amend**

17 Although I grant Thomas leave to amend, I do not grant him leave to amend in any way
18 that he sees fit. Thomas has leave to amend to allege additional true facts to show that specific
19 prison personnel used excessive force against him, violated his due process rights in his
20 disciplinary proceedings, and/or retaliated against him for his protected conduct. I do not give
21 Thomas leave to assert new claims.

22 If Thomas chooses to file an amended complaint, he is advised that an amended
23 complaint replaces the complaint, so the amended complaint must be complete in itself. *See Hal*

1 *Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding
2 that “[t]he fact that a party was named in the original complaint is irrelevant; an amended
3 pleading supersedes the original”); *see also Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.
4 2012) (holding that for claims dismissed with prejudice, a plaintiff is not required to reallege
5 such claims in a subsequent amended complaint to preserve them for appeal). This means that
6 the amended complaint must contain all facts and claims and identify all defendants that he
7 intends to sue. He must file the amended complaint on this court’s approved prisoner-civil-rights
8 form, and it must be entitled “First Amended Complaint.” Thomas must follow the instructions
9 on the form. He need not and should not allege very many facts in the “nature of the case”
10 section of the form. Rather, in each claim, he should allege facts sufficient to show what each
11 defendant did to violate his civil rights. He must file the amended complaint by October 25,
12 2024. If Thomas chooses not to file an amended complaint curing the stated deficiencies, I will
13 dismiss this case without prejudice for failure to state a claim.

14 **III. CONCLUSION**

15 I therefore order that Thomas’ application to proceed *in forma pauperis* [ECF No. 1]
16 without having to prepay the full filing fee is deferred.

17 I further order the Clerk of Court to detach and file the complaint [ECF No. 1-1].

18 I further order that the complaint is dismissed with leave to amend as set forth above.

19 I further order that, if Thomas chooses to file an amended complaint curing the
20 deficiencies of (1) his Eighth Amendment excessive force claim; (2) his due process claim, if
21 any, with respect to his disciplinary proceedings; and (3) his retaliation claim, if any, as outlined
22 in this order, he must file the amended complaint by **October 25, 2024**.
23

1 I further order the Clerk to send to Thomas the approved form for filing a § 1983
2 complaint, with instructions. If Thomas chooses to file an amended complaint, he should use the
3 approved form and write the words “First Amended” above the words “Civil Rights Complaint”
4 in the caption.

5 I further order that, if Thomas fails to file an amended complaint curing the deficiencies
6 of his claims by October 25, 2024, I will dismiss this action without prejudice for failure to state
7 a claim.

8 DATED this 24th day of September, 2024.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE